

Morgan Stanley Capital Group Inc.) **Docket No. EA-184-C**

Consistent with Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”),¹ Morgan Stanley Capital Group Inc. (“MSCG”) hereby submits this Motion for Leave to Answer, and Answer to Protest (“Answer”) in response to the Intervention and Protest (“Protest”) filed by Public Citizen, Inc. (“Public Citizen”) in this proceeding.² The Protest was submitted in response to MSCG’s Application for Renewal of Authorization to Export Electricity from the United States to Mexico (“Application”). As explained below, the Protest does not address how the relevant facts adduced by MSCG in its Application fail to satisfy the Department’s criteria for granting export authorization. In its Application, MSCG provided the requisite information in accordance with the Department’s standards, and therefore MSCG requests that the Department issue an order granting the requested reauthorization by no later than December 7, 2016 (the date on which its current authorization to export electricity to Mexico expires).

I. MOTION FOR LEAVE TO ANSWER

The Department's September 21, 2016 notice of MSCG's Application (as published in the September 27, 2016 *Federal Register*) states that protests of the Application should be filed

¹ 18 C.F.R. §§ 385.212 and 385.213 (2016) (incorporated pursuant to the Department's *Federal Register* Notice).

² Motion to Intervene and Protest, Public Citizen, Inc., Docket No. EA-184-C (filed Oct. 21, 2016).

with the Department in accordance with FERC's Rule 211.³ MSCG hereby answers Public Citizen's Protest in accordance with FERC's Rules. Although answers filed in response to protests generally are not permitted by FERC's Rules,⁴ FERC has permitted answers when they clarify issues in dispute, provide information to assist in FERC's decision making process, or ensure that the record is complete and accurate.⁵ MSCG respectfully requests that the Department grant its Motion for Leave to Answer and accept its Answer because it clarifies issues relevant to this proceeding, and it will ensure that the record in this proceeding is complete and accurate.

II. ANSWER TO PROTEST

The Protest does not raise issues that are related to the criteria that the Department considers when deciding whether to grant authorization to export electricity under Section 202(e) of the Federal Power Act ("FPA").⁶ Therefore, the Department should grant MSCG's Application.

FPA Section 202(e) requires the Department to grant a request for export authorization unless the Department finds that the exports at issue would "impair the sufficiency of the electric supply within the United States or would impede or tend to impede the coordination in the public

³ *Morgan Stanley Capital Group Inc.*, Notice of Application, 81 Fed. Reg. 66,266 (Sept. 27, 2016).

⁴ 18 C.F.R. § 385.213(a)(2) (2016).

⁵ See, e.g., *Fortis Inc.*, 156 FERC ¶ 61,219, at P 32 (2016) (accepting an answer because it "provided information that assisted us in our decision-making process"); *Mich. Elec. Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (accepting an answer because "it provides information that clarifies the issues and aids us in the decisional process"); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093, at P 10 (2003) (finding good cause to accept an otherwise impermissible answer because the answer assisted the Commission in understanding and resolving the issues involved in the proceeding); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048, at 61,278 (2001) (finding good cause to waive Rule 213 when the pleading helped to ensure a complete and accurate record).

⁶ 16 U.S.C. § 824a(e).

interest of facilities subject to the jurisdiction of the Commission.”⁷ The Department has interpreted this language to require it to determine that (1) sufficient generating capacity and electric energy exist such that the export could be made without compromising the energy needs of the exporting region,⁸ and (2) the export will not compromise transmission system security or reliability, considering the operational reliability of the domestic electric transmission system.⁹ The Department consistently has found that power marketers like MSCG satisfy these criteria because the power that they would purchase for export is, by definition, surplus to the needs of the electric system and because the power marketers’ export authorization is conditioned on the transmission of electricity being arranged under, and subject to, the rules and regulations governing the reliable operation of the transmission system.¹⁰

The Protest fails to demonstrate a basis for the Department to deny or delay the authorization requested by MSCG’s Application. The Protest does not show that electric energy exports by MSCG will impair the sufficiency of the electric supply for the Western Electricity Coordinating Council (“WECC”) and Electric Reliability Council of Texas (“ERCOT”) regions where exports to Mexico are relevant. Further, the Protest does not show that the exports will have any adverse impact on the security or reliability of the transmission system in the WECC or ERCOT regions.¹¹

⁷ *Id.*

⁸ *See, e.g., BP Energy Co.*, OE Order No. EA-314, at 1-2 (Feb. 22, 2007), *renewed*, OE Order No. EA-314-A, at 2 (May 3, 2012).

⁹ *Id.*

¹⁰ *See, e.g., BP Energy*, OE Order No. EA-314, at 2.

¹¹ *See* Application at p. 5. The Protest states that MSCG’s application should be considered incomplete until MSCG provides details regarding the tolling agreements it has with unaffiliated electric generation project companies. Protest at 1, 3. The Protest fails to demonstrate how the existence of tolling agreements relates to whether electricity exports could be made without compromising the energy needs of the exporting region or whether the exports will

continued . . .

As required by the Department's regulations¹² and as reflected in the legal opinion submitted with its Application,¹³ MSCG will comply fully with all applicable laws and regulations in connection with its electricity exports.¹⁴ Having met the Department's requirements, there is no reason for the Department to delay its processing and approval of MSCG's Application.

compromise transmission system security or reliability. In any case, information regarding MSCG's tolling agreements is readily available on FERC's website, in MSCG's market-based rate docket. In sum, MSCG's existing tolling agreements, two in the Southeast region and one in the PJM region, could not have an impact on the sufficiency of the energy supply in the exporting region or the security or reliability of the transmission system in that region.

¹² See 10 C.F.R. § 205.303 (2016) (requiring as Exhibit B "A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State laws.").

¹³ See Application, Exh. B.

¹⁴ Such applicable laws and regulations include not only those of the Department and of FERC, but also those of the Bank Holding Company Act of 1956, as amended, and any applicable rules and regulations issued by the Board of Governors of the Federal Reserve System ("FRB") pursuant thereto. Further, it should be noted that the FRB's Notice of Proposed Rulemaking referenced in the Protest has not yet been finalized.

III. CONCLUSION

For the foregoing reasons, Morgan Stanley Capital Group Inc. respectfully requests that the Department accept this answer, find that Public Citizen Inc.'s Protest raises issues outside the scope of this proceeding, and grant the Application as requested.

Respectfully submitted,



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*Attorneys for
Morgan Stanley Capital Group Inc.*

Date: November 2, 2016

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Department in this proceeding.

Dated at Washington, DC this 2nd day of November, 2016.

/s/ Allison E. Speaker

Allison E. Speaker

Troy, Angela (CONTR)

From: Moody, David <David.Moody@sutherland.com>
Sent: Wednesday, November 02, 2016 2:40 PM
To: Electricity.Exports
Cc: Lawrence, Christopher; Troy, Angela (CONTR); Frank, Dan; Speaker, Allison
Subject: OE Docket No. EA-184-C, Answer to Protest
Attachments: MSCG_Answer_to_Protest_OE_Docket_No._EA-184-C.pdf

Attached please find Morgan Stanley Capital Group Inc.'s MOTION FOR LEAVE TO ANSWER, AND ANSWER TO PROTEST to be filed in OE Docket No. EA-184-C.

Please reply to this email as confirmation of receipt.

A hard copy of the filing is being sent today via overnight delivery to:

Christopher Lawrence
Office of Electricity Delivery & Energy Reliability
Mail Code: OE-20
1000 Independence Avenue, SW
Washington, DC 20585-0350
202-586-5260

Thank you.

David Moody | Paralegal Specialist | 202.383.0683

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